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REMINISCENCES OF THE BAR*

BY

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IN the years when I was a law student (1822-1883) there was no separate Law College ; there was only a law class attached to the Presidency College and there was only one professor. The first professor we had was Mr. Shephard, who afterwards held more distinguished positions. We were not obliged to spend the day in the College. The law class was held only for an hour in the evening and for about 3 or 4 hours a week. We used to go to the law class and sign the attendance register which was kept downstairs below the place which was then used as the Chemical Laboratory of the Presidency College ; and once we signed our names in the register, our obligation to attend was discharged. Whether we went upstairs and attended the lecture or not was left to our own sweet will and pleasure. I must confess that looking back at my conduct as a law student, I was far from being an exemplary student in point of College attendance. I shall not go so far as to say that I was a bad student in other respects, but in the matter of attendance at the class I was no better than the rest.

One of my best friends in those days was the late Mr. V. Krishnaswami Iyer. We became friends in the year 1877 when we were both fellow-students in the S. P. G. College at Tanjore in the Matriculation Class, and we stuck to each other for at least ten years. We were in fact regarded as inseparables and Mr. Thompson, the then Principal of the Presidency College, once called us the Siamese twins. He was sure of finding the one wherever he saw the other. What we both did was, we signed our names in the register and went away to the beach. We spent an hour there, and at the end

*A series of lectures delivered to the apprentices-at-law in 1918.

of the hour went home. I do not say that the hour we spent on the beach was unprofitable. Far from that. I am sure it improved our health. I am sure that the loss we sustained by abstaining from the lectures was also not very serious, because much depends upon the manner of the lecturer, whether he is able to make his lecture interesting.

So far as my law-student days were concerned, it was a misfortune that the three gentlemen who held the Professorship during my time were all distinguished by their unattractiveness of manner. Mr. Shephard had a very peculiar delivery; we could hear only the accented syllables and not the others. It was somewhat of a trial to be obliged to listen to him, whether as law professor or later on when we had to deal with him in a higher sphere; so that, for the life of me, I cannot say what there was in Mr. Shephard's lectures, whether he did justice to his subject or not, whether it was interesting or not; for I can assure you that I have no recollection of having seriously attended any of his lectures. He was succeeded for a time by Mr. Mitchell, who was then one of the leading barristers in Madras with a good Chamber practice. Mr. Mitchell had also an equally unattractive manner. It was not so much that his delivery was bad as that he was always looking absent-minded. He never looked at the students, he never looked in front or this side or that, but always looked down upon the table. It was very difficult to get up sufficient interest to be able to sit for an hour in his class. So, we dealt with Mr. Mitchell in the same way as we dealt with Mr. Shephard. Then Mr. Mitchell went and we had a third professor, Mr. P. D. Shaw, whose name you are not likely to have heard. He was a man with a large beard, and most of his words were lost in his beard, and his delivery was ineffective. Thus, whether it was due to our own unworthiness or really due to the defects of our professors, it must be confessed that the students did not owe very much to their professors. And perhaps there is an advantage in that, that it throws a student back on his own resources. Though we made this far-from-exemplary use of our time at the Law class, we devoted all our time to law-study at home. At any rate, speaking for myself and my friends, whether we were benefited by the lectures or not, so far as the results went, we were not very much affected by the fact that we had lost the advantage of the lectures.

In those days, the strength of the law class was very much less than it is now. I think there might have been about 80 or 100 in each class. In those days, officials were also permitted to put in their attendance, get their certificate of attendance and go up for the examination later on whenever it suited their convenience. That very largely added to the number of law students. There might have been about a hundred, but all did not mean serious business. It was only some of them, about 50 per cent. perhaps, that meant to go up for the examination. I think in the year I went up for examination eighty or so appeared for the examination and 32 passed.

After the examination was over, we had to choose whether we should become apprentices or go to the mofussil and settle down there as Vakils. As for myself and several of my friends, we decided to become apprentices here. The number of apprentices in those days could not possibly have been anything like what I find now. I understand that the number now is 150. Seeing that there were only 32 that passed in my year, it could not have been even a fifth of the present number, and therefore the difficulty in finding masters under whom to serve as an apprentice was probably very much less in those days than it is now. At the same time, I do not believe that the choice of a master was very much influenced by the right sort of considerations. I believe a number of perfectly irrelevant or immaterial considerations entered into the decision as to whom you were to serve under. I suppose the choice of a master in that respect is not altogether a singular incident in one's life. Our marriages are, I believe, contracted in the same way. I do not suppose people enter into marriages with any regard to the only considerations which ought to influence them in their entering upon one of the most important chapters of a man's life. So far as I was concerned, I can tell you what my motives were which influenced me in the choice of a master, and I may tell you also what I thought were the considerations which influenced some of my friends.

In those days also there was a pretty fair cleavage of the profession into different classes even among the Vakils. There were of course the Barristers and among the Vakils, there were Appellate Side practitioners, there were the Original Side practitioners, and there were also Small

Cause Court practitioners, Criminal Court practitioners and so on. Small Cause Court practitioners and Criminal Court practitioners were not exactly the sort of persons to whom one would have thought of apprenticing oneself. The state of things that prevailed then was more or less similar to that which obtains now, though perhaps the cleavage was not quite so pronounced. The Appellate Side practitioners generally did not care for business on the Original Side. Of the Original Side practitioners, however, some had considerable or respectable Appellate Side practice and some of the Original Side practitioners had also practice in the Small Cause Courts. The master whom I chose was an excellent friend of mine and my father's, Mr. R. Balaji Rao. The reason why I chose him was, he was my neighbour and a great friend of my father's. He lived in the next house. I had been placed under his guardianship during my student days and I think he would probably have been displeased if I did not join him. Another reason was that Mr. Balaji Rao had a large practice on the Original Side and a considerable practice on the Appellate Side. I thought it desirable to acquire some knowledge not merely of the practice on the Appellate Side but also of the practice on the Original Side. There were also other people who had practice on both the Original and the Appellate Sides to whom I might have gone. I did in fact, think of one man, and that was Mr. Spring Branson who was then a leading figure in the bar. He was a barrister with a large practice on the Original Side and with very considerable practice on the Appellate Side. He was known to be a good cross-examiner, a good speaker and a man with a high character. I first thought of going to him. But when I got a friend to write to him on my behalf, his reply was this—I refer to this incident merely on account of the interest which attaches to his reply—that the usual practice was to allow one's apprentices to have a free run of one's library, to allow him to cool his heels in one's chambers and let him take care of himself, that that was not his ideal and he had therefore uniformly refrained from taking any apprentice. He did not wish to make an exception. His ideal of the obligations of a master towards his apprentice was rather high, and he thought he could not satisfy his own ideal. So I could not get myself apprenticed under him. Among the vakils, the leading vakil then in Mylapore was Mr. Bhashyam Iyengar, afterwards, Sir V Bhashyam Iyengar. But his practice was

confined purely to the Appellate Side and his mofussil practice had not grown to such large dimensions as it did in later years, and his want of the Original Side practice appeared in my eyes then to be a disadvantage and I did not therefore apply to him. So, my friend Mr. Krishnaswami Iyer and myself apprenticed ourselves to Mr. Balaji Rao.

You may be interested to know something about the conditions of apprenticeship life in those days. Those were the days when there were no trams and we had to come to the High Court by jutka all the way from Mylapore or whatever other part of the town we were in. And in the High Court itself we were under no obligation to take any notes. We were under no obligations to attend this Court or that Court, or to prepare a certain number of plaints or affidavits or petitions, and we were not called upon to furnish any statistics as to the work we had done. So we pleased ourselves just as we thought fit. We went about from Court to Court. I suppose if there was any particular business in which our own masters were engaged, we attended that Court. But otherwise we fled from Court to Court according to the apparently interesting character of the business then occupying the attention of the Court or the position of the practitioners who might be arguing the case. Of course, naturally in those days as in these, one liked to hear a good speaker or a good cross-examiner, and if Mr. Norton was on his legs, there was a rush to the Court where he was. Or if Mr.Branson or Grant was arguing or conducting any case, we flocked to that Court. I do not suppose human nature is different now from what it was in those days and it is more or less likely to be the same. But there was one thing which contributed to our sense of happiness at the time and that was the freedom from all irksome restrictions by way of tasks we had to perform.

With regard to the relations of apprentices to their masters, I believe very few masters devoted any time to any formal or systematic instruction to their apprentices. As Mr. Spring Branson observed, what happened in the case of an Appellate Side practitioner was for the apprentice to get his printed papers in some case from his master's clerk, study and take notes and see if he could make himself useful in any way to his master, and on the Original Side also he

could study any case, attend the Court and see how the case was conducted. Very few masters took any special pains to give any instruction to their apprentices in procedure or in any other subject. They were left to pick up the thing for themselves. It is not perhaps a system which can be justified in the abstract, but there is a great deal to be said for it. When you have got a busy practitioner as your master, he could hardly find time to devote to giving instructions to his apprentice. He could just manage to rush through his cases, to get instructions from his clients, to prepare his cases and to argue. He could hardly find time to devote to teaching. It may perhaps be said that if that was the case, a master with a sense of responsibility ought to refuse to take apprentices. Well, that is perhaps right from one point of view ; but, what would happen if almost all refused to take apprentices. If they said, ' I cannot find time to devote to teaching, you must shift for yourself, I cannot take you, ' I am sure that out of 150, who are members of this Association, the vast majority would rather be taken on any terms than insist upon his doing anything in the shape of teaching or giving instruction.

Now, passing from the relations of apprentices to their masters, I will just give you some idea of the conditions which obtained in the High Court then. The High Court was not held in this building in which you see it located now, but in the old buildings opposite the Harbour Office. It was a very old building and it was nothing so palatial or splendid as the one in which you are privileged to spend your days in walking about. In the old High Court, there were only 5 Judges besides the Chief Justice. There was an Original Side Court, a Court doing miscellaneous work either by way of settling issues or doing insolvency work, an Appellate Court and an Admission Court to do miscellaneous work on the Appellate Side. Occasionally there would be two Appellate Benches. When I was an apprentice, the Chief Justice of the High Court was Sir Charles Turner. He retired in May, 1885, almost within a month after I was enrolled. He was a man of commanding intellect and commanding personality, a very fine speaker who could deliver *extempore* judgments without any hesitation for a word and was a capital lawyer. He had been previously a puisne Judge in the Allahabad High Court and he was appointed Chief Justice of Madras in 1879 after the retirement of Sir Walter Morgan. He was altogether the

ablest Judge in the High Court leaving out Justice Muthuswami Aiyar. Sir Charles Turner was a man of quick impatient intellect, and he did not like repetition or any unnecessary elaboration of the case. He would see your point at once, and it was altogether unnecessary for the practitioner to repeat his argument. Sometimes he was very impatient. It is one of the general failings of quick intellects and he was not free from that failing of impatience. In his Court, it was a disadvantage to have one's case immediately after lunch, for owing to his special habits he felt very drowsy for about half-an-hour or an hour after lunch. We were not then therefore driven on in the same way during that time, but we had not the advantage of his attention to the case. He was by far the ablest of the European Judges, and, leaving out Judges who are now amongst us, he was certainly the ablest Chief Justice in the High Court within my recollection.

The first Chief Justice of the High Court was Sir Colley Scotland, and he was a man of decided ability. The next was Sir Walter Morgan. He was also a man of very quick intellect, but I had not the advantage of seeing either Scotland or Morgan. Morgan was also disposed to be impatient with practitioners very often, but he was credited by people with a desire to do justice. I have heard a story that in one case he wanted to reverse the decision of the Lower Appellate Court on a mere question of fact. I am not sure of the name of the practitioner who appeared before him, but my recollection is that it was Mr. Mayne. At the end of the argument Sir Walter Morgan at once reversed the judgment. Mr. Mayne asked, 'Reasons, my Lord.' The reply was 'None.' He simply recorded his judgment of reversal, because he was sure that it would not go to the Privy Council and he at once disposed of it summarily. He was a man who cared to do what he considered justice rather than be a stickler for mere law. But at the same time he was known to be an exceedingly able man and an exceedingly fine speaker who could deliver judgments for hours together without any note and without being at a loss for a word. He was succeeded by Sir Charles Turner. My knowledge of him is confined to the period of my apprenticeship. He was undoubtedly the ablest Chief Justice among those who succeeded Sir Walter Morgan and who preceded the present Chief Justice.

The next figure that comes to one's recollection is that of Mr. Justice Muthuswami Iyer. Of course he was by far the most satisfactory Judge in the High Court and the one before whom every practitioner liked his case to come on. He was so conscientious, so painstaking, so thorough and so keen to do justice that every one wanted his case, if possible, to come up before him. His knowledge of law was profound. There was not another Judge on the Bench then, except perhaps Turner, who could compare with him in erudition. It was a pleasure to argue one's case before Mr. Justice Muthuswami Iyer. He was exceedingly methodical in his study of cases and in hearing arguments. He was not satisfied with merely knowing that he himself understood what the practitioner urged before him. He was anxious that the practitioner should understand that he had grasped the facts of the case, and therefore at the end of every stage of the argument he would recapitulate the arguments of the practitioner and ask him, 'This is your position, is it not ?' and naturally with his much greater intellect, with his profound erudition and with his own mastery of legal language, he put the arguments in very much better form than the practitioner himself had done. It was after he made sure of his ground and ascertained from the practitioner himself that the latter was satisfied that the Judge had understood the case, that he went further. But it did not take him any time to go through this process. The practitioner had only to urge an argument once for him to grasp it, and as soon as he grasped the argument, he at once asked, 'Is this not so,' and the practitioner was satisfied that the Judge had thoroughly understood his case, and no practitioner ever cared to repeat his arguments.

Then, we had the Senior Puisne Judge, Mr. Justice Kernan, a very genial, old, Irish Judge, full of wit, very pleasant and very kind-hearted. By the time I became an apprentice he had become rather deaf, but that did not seriously interfere with the discharge of his judicial duties. He was a very pleasant man to deal with and made no distinction between one practitioner and another. I remember one case on the Original Side in which Mr. Wedderburn, a senior practitioner, put forward some argument, and he treated him quite as roughly as any Judge might treat a practitioner enrolled only yesterday :—' Mr. Wedderburn, you had

no practice at all at Home till you came out here. If you had any practice at Home before, you would not deal with your case in this fashion '—and he had no hesitation in expressing his opinions freely and frankly. He was a very kind-hearted, cheery, old Irish Judge. He was generally confined however to the Original Side. He was very popular with the Barristers and Attorneys, and supposed by them to be a very good Judge of facts. My personal experience however does not enable me to say whether that opinion was correct. But I have had sufficient experience of his kindness of disposition. Very often a young junior would ask the Judge to postpone the hearing of his case to enable his senior to come and argue it. But the reply was 'Now is your opportunity to go on,' and he would listen to him kindly. It would make no difference with him that it was a junior that was arguing the case and not a senior. He wanted to give opportunities to the junior. Of course, there are occasions when even a junior, who cares for his own interest and who is pushful by nature, does not always appreciate this as a piece of kindness. There are occasions when even a junior may feel that the Judge would have shown more real kindness and more regard for the interests of the suitors by adjourning the case to enable the senior practitioner to come in. However, so far as geniality of disposition and goodness of nature were concerned, they were always evident, and he was very popular with the bar.

The other Judges who were then in the High Court were Kindersly, Hutchins and Brandt—three senior Judges. Of Mr. Kindersly all that I remember is his long flowing beard and nothing else. I think he retired about the time that I was enrolled. Mr. Justice Hutchins was known to be one of the ablest Civilian Judges of the day, a man of very quick intellect, and he rose to much higher positions. He became a member of the Council in 1886 or 1887. Then he rose to be a member of the Viceregal Council and then went to the India Office, holding all the higher appointments open to the members of the Civil Service. Mr. Hutchins was a man of perennial youth. He had hardly a hair on his upper lip and he was always looking like a boy. And very probably, one secret of that perennial youth was his active habits. He was regarded as one of the ablest exponents of cricket in his day, and he was playing cricket, I believe, even when he was a High

Court-Judge. He was a man of exceedingly active habits, very quick intellect and he was a good Judge. Mr. Justice Brandt was the most junior Judge when I came here. There is nothing much to be said about him except that he represented the type of the robust Englishman. He claimed common sense and a desire to do justice, and did not waste time on technicalities.

Coming to the bar, the Barristers then were much more flourishing than they were at a subsequent period. I make no reference to the present condition of the barristers, for I have no acquaintance with the state of things now. There were several barristers who were enjoying an exceedingly lucrative practice and who were very worthy representatives of the bar. The law offices then were all held by barristers, except of course the Government Solicitor's. The Advocate-General at that time was Mr. P. O'Sullivan. The Government Pleader was Mr. Handley. He was succeeded by Mr. Shephard. The Crown Prosecutor was Mr. Tarrant, a barrister, the Administrator-General, Mr. Gould, a barrister. There was not one appointment which was filled by an Indian in those days. Of the European members of the Bar, I will just make a reference to a few. Mr. P. O'Sullivan was the head of the Bar as Advocate-General, and there was no man better fitted by character or by attainments to occupy that position worthily. He was a sound lawyer and a very learned man. He was most painstaking and thorough in his study of cases and a man of the highest character. Many stories used to be told about his generosity to poor Indian students. Any student who went and told him that he was in need of funds or help had only to mention his want. He would at once sign a cheque for whatever the student wanted. If the student wanted a book, he would make a gift of it—a man of the most generous instincts. His erudition, his attainments, his industry and his conscientiousness made him dreaded as an opponent. I have heard it said that the late Mr. J. D. Mayne, when he was told that P. O'Sullivan appeared against him, would study the case with special care. If any other barrister appeared against him, he was not disposed to take the same amount of pains. As regards his manners and appearance, perhaps it might interest you if I tell you that he was a very fat man with whiskers and a bald head and eternally perspiring, pouring floods of perspiration. His pockets used

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to be stuffed with handkerchiefs. A man who was exceedingly careful in his statements, he never contradicted a statement, unless he was absolutely sure of it. He would often say, 'It may be so, I cannot say.' He was always very guarded, extremely scrupulous, and a model of fairness. As a speaker he was not particularly attractive, but there was nothing repulsive about him unless one had a particular aversion to a fat man with a bald head, frequently mopping his face with a number of handkerchiefs.

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By the time I was enrolled, Mr. Handley was appointed Chief Judge of the Small Cause Court and was succeeded by Mr. Shephard in the Government Pleadership. Then Handley was translated to the High Court as a Judge. Mr. Handley had a fine profile, a man with a very fine Grecian nose, fine features and a head as polished as a billiard ball. One unconquerable failing of his was somnolence. He always slept on the Bench. There were more hours of sleep than of wakefulness. I have appeared before him both in the Small Cause Court and in the High Court. He used to sit in his chair and listen and quietly his head would lean on one side, first on his hand, and then his hand would prove too frail a support and the head would come down lower to be awakened by a rude contact with the chair. Then his sleep would become too perfect and sound to be disturbed. But I have noticed one thing. He was a fair-minded man and a good man. He was generally asleep on the Original Side, but after he woke up, he was always successful in catching the last words and catching the thread of the argument. A good man, but with this weakness of the flesh carried to excess. Then there was Mr. Shephard with whom my acquaintance became closer after I was enrolled. I used to meet him oftener and argue cases before him. To the last he retained his peculiarly explosive manner of speaking, which consisted in pronouncing audibly the accented syllables and omitting the rest. The office of Crown Prosecutor was held by Mr. Tarrant, a cheery old man with a fine mass of silvery hair and silver-mounted spectacles, with a clear, beautiful voice which rang like silver. Then there was the Administrator-General, Mr. Gould. He was never visible at all in the High Court. He was always confined to his Chambers in the Madras Club and I remember seeing him only once in the High Court. But it was said he

was a man of great culture and that it was bad health that prevented him from taking active practice in the Courts.

Then, among the persons who were not holding any office, there was Mr. Spring Branson, a man with a very fine presence. He had a commanding figure with a fine beard and soldierly gait. He was himself a Commandant in the Volunteer Artillery—I think he was Colonel of the Volunteer Atillery. A very accomplished man in many ways. There were many things which he knew. He could lecture to you about the building of ships, yachts, fortifications, artillery, military tactics, botany and any number of subjects. A man of great general culture, but, as is often the case with men who are good all round, not quite so good as a lawyer. But he was a man who took particularly great pains to study the case properly, and he was a very good speaker. In those days I used to admire his wit very considerably. He often cracked jokes which set the Court laughing, and though he dealt with the witnesses severely, he did not bully them as other practitioners did. He was altogether one of the best practitioners on the Original Side. He presented his cases very well, and it was a pleasure to hear him either on the Original Side or on the Appellate Side. But I liked him best on the Original Side. He was a good cross-examiner and a good speaker. When O'Sullivan died in 1886 or 1887, he was succeeded by Shephard who was soon afterwards appointed Judge and Branson became the Advocate-General.

The next figure that comes to one's mind is that of Mr. Willie Grant. The Grant family had been connected with Madras for a long time, and all the members of it were generally lawyers. Mr. Willie Grant was the eldest of three brothers. Mr. Willie Grant was one of the leading barristers on the Original Side. He had his brother Douglas who is now a solicitor in England. Another brother, Robert Grant, was also a solicitor and was subsequently called to the bar. Willie Grant was one of the finest cross-examiners on the Original Side and the most effective speaker, a man who did not study, but somehow or other managed to put his case effectively without appearing to bestow any thought upon it. A man of very quick penetration, a splendid cross-examiner and one who spoke remarkably well. It was not any literary merit that charmed the hearer but the directness of his language and the cogency of his arguments. He was altogether one of the

best Advocates on the Original Side. Then there was Mr. Norton. He was then comparatively a junior. But he had blossomed into the full maturity of his powers as an Advocate and as a speaker. There was always a charming, literary flavour about Mr. Norton's style of speaking. You could see that he was a man of culture at once when he began a case. He had a splendid presence, a fine delivery and a command of elegant gesticulation. I do not think that any other member of the bar could claim to have practised elocution or action or who could be mentioned side by side with Mr. Norton in this respect. There have been some cases in which some of these leaders were arrayed together and one had the pleasure of comparing their performances in contrast with others. For instance, there was a very sensational trial shortly after I was enrolled. It was known as the Garstin Dacoity Case. Mr. Garstin was the Senior Member of the Board of Revenue. He went on a tour to Madura and he was dacoited, and the Zemindar of Bodinayakanur was supposed to have instigated that dacoity and he was charged in the High Court. He was defended by Mr. Norton and there were numbers who appeared for him or for some of the accused, Mr. Grant and Mr. Branson, and for the Crown, Mr. O'Sullivan conducted the prosecution. By far, the best and the most effective performance was that of Mr. Willie Grant. Mr. Norton's address to the Jury was subsequently printed and, I believe, published. I do not know whether copies are available now ; it was a very fine literary performance and it lasted for two days; but Mr. Grant took only three hours and he put the case in a far more convincing and telling way than any other Advocate did. He was the most effective of the speakers that I have known.

Then, there was Mr. Wedderburn, another European Barrister, who has long since retired, a very good man who made as few racial distinctions as possible and treated the Indian practitioners very well. He was a good man on the whole. He had a large practice in Criminal Appeals, but otherwise there was not very much to speak of. Mr. Wedderburn was a man of very blunt speech and very abrupt, and he spoke very little. He afterwards became Advocate-General for a time, and I have heard that his opinions used to be commented upon for their brevity. He used to state his opinions

without any reason why he arrived at his conclusions. He thought that it was not for the Government to ask him why he took such and such a view. There was Mr. Johnstone whose name has been almost forgotten now, but he was quite a leading figure at the time. Mr. Johnstone was a contemporary of Mr. Mayne, and Mr. Norton in later days. He was a man of quick intellect, a good cross-examiner and a fluent speaker. He had a large Original Side practice and criminal practice. At this distance of time there are only one or two things perhaps worth while recalling to our memory about him. About his style of speaking, I have heard it said that Mr. Justice Holloway used to compare it to summer showers. He used to rattle along for 10 or 12 minutes and then come to a dead-stop, then again begin to rattle off. That was the sort of style which he cultivated in speaking—a number of rapid marches followed by quick sudden halts. There is one joke which he unconsciously perpetrated and which I believe he himself discovered to his own horror, but it was recognised by all that it was unintentional. Sir Arthur Collins, the Chief Justice, was presiding over the Sessions Court. When Mr. Johnstone was addressing the Jury, Sir Arthur Collins got impatient and told him, 'Look here, Mr. Johnstone, do not go on laying down bad law to the Jury.' 'No, no, my Lord, I leave it to the Court,' was his reply. Of course he did not mean what he said, but there was a burst of laughter in the Court because it evidently meant that the Chief Justice was going to lay down bad law. When this outburst of laughter greeted his unwitting remark, Mr. Johnstone himself was greatly horrified. He did not mean to make any insinuation against the Chief Justice. He was a very pleasant, good-natured man, and not capable of any such sly joke as it proved to be.

Lastly there was Mr. N. Subramaniam who was the leading Indian barrister and subsequently became Small Cause Court Judge and Administrator-General. He was a sensible good man and had a large Appellate Side practice.

(*To be continued.*)

SUMMARY OF ENGLISH CASES.

RUSSEL *v.* BEECHAM, (1924) 1 K. B. 525.

Landlord and tenant—Covenant against alienation—" Assign or part with "—Meaning of—If includes sub-letting.

A lease contained a covenant against alienation in the following words :—" The lessee shall not assign or part with this lease or the premises hereby demised. . " *Held*, by Bankes and Atkin, L. JJ. (Scrutton, L. J. not deciding the question) the expression " assign or part with " means parting with the whole interest in the premises or in part thereof but do not include a sub-letting of part of the premises. Courts should put a strict construction on the words of a covenant which if broken entails forfeiture.

BURGEOIS *v.* WEDDELL AND CO., (1924) 1 K. B. 539.

Arbitration—Evidence—Difference between arbitrators—Reference to Umpire—Arbitrator if can give evidence.

Where disputes arising out of a commercial transaction are referred to arbitration, but on account of differences of opinion among the arbitrators the matter is referred to an Umpire for decision, there is no rule of law which prevents one of the arbitrators from being called to give evidence.

An arbitrator can in commercial transactions act as an advocate or agent of the party who appoints him. In this respect there is a difference between arbitrations conducted as legal arbitrations and those conducted as commercial arbitrations.

BRANDON *v.* OSBORNE GARRETT AND CO., (1924) 1 K. B. 548.

Negligence—Attempt to rescue husband from danger—Injury without impact—Liability—Remoteness of damage.

While a husband and wife were doing some shopping, the skylight of the roof which was then under repair gave way and a pair of glass fell on the husband. The wife who was close to the husband saw the glass fall and clutching his arm tried to pull him. No glass fell on her, but she strained her

leg severely. In an action for damages, *held,* both husband and wife were entitled to it. The act of the wife in trying to pull her husband cannot be said to amount to contributory negligence.

Where a person sustains injury through a combination of acts, some done by the defendant and some by himself, it is for the Jury to say having regard to all the circumstances, whether (1) the injury is the natural and probable consequence of the defendant's acts ; and (2) whether the plaintiff is guilty of contributory negligence.

PRAGER *v.* BLATSPIEL, STAMP AND HEACOCK, LTD., (1924) 1 K. B. 566.

Principal and agent—Agency of necessity—Applicability of doctrine—Sale of goods—Impossibility of delivery or communicating with buyer—Re-sale—When valid.

A firm of merchants in Romania purchased some furs through their agents in England. On account of the German occupation of Romania it was not possible for the agent to communicate with the principals or send the goods to them till the war was over. They therefore sold the goods, but the evidence disclosed there was no necessity to sell, nor was the act of sale *bona fide.* In an action for conversion of goods and for damages, *held* the defendants were not agents of necessity and were liable.

The doctrine of agency of necessity took its rise from maritime adventure and under the doctrine in cases of necessity the master of a ship has power and it is his duty to sell the goods in order to save their value or some part of it. The doctrine is not now confined to ship-master cases ; its basic principle is a broad and useful one.

In the case of sale of goods, the doctrine cannot apply unless the agent is unable to communicate with the principal. The agent has next to prove the sale was necessary—an actual and definite commercial necessity. Then he must prove that he was acting *bona fide* in the interests of his principal.

BRANDT *v.* LIVERPOOL, BRAZIL AND RIVER PLATE STEAM NAVIGATION CO., LTD., (1924) 1 K. B. 575.

Bill of Lading—Indorsement to pledgee—Pledgee taking delivery after paying freight—Right to sue—Estoppel—"Apparent good order and condition."

Goods were shipped in a wet condition but the shipowners gave a bill of lading that they were shipped in "apparent good order and condition." The bill of lading was indorsed to pledgees who advanced money thereon and when the ship arrived paid freight, demurrage, etc., and took over the goods. They then brought an action for damages for delay in delivery and for excess taken from them for expenses incurred in order to remove the wet condition of the goods. *Held,* (1) though title to the goods had not passed to the pledgees under the Bills of Lading Act, by the presentation of the bill of lading, payment of freight, etc.,and their acceptance by the shipowners, a contract had arisen between them and the latter to abide by the terms of the bill of lading, and on that basis a suit for damages was maintainable ; (2) that the statement in the bill of lading that goods were received "in apparent good order and condition" estopped the shipowners from contending that goods were received wet and that the delay was due to making them fit for transit ; and (3) as a result of the estoppel the shipowners could not claim the expenses incurred in rendering the goods fit for transit.

Per Bankes, L. J. :—Where the holder of a bill of lading presents it and offers to accept delivery, if that offer is accepted by the shipowner, the holder comes under an obligation to pay freight, demurrage, etc., and the contract so made by the offer and acceptance covers, so as to include the terms of the bill of lading.

Per Greer, J. (in the Court of First Instance) :—The statement in a bill of lading that goods are shipped in good order is addressed to all those persons who in the ordinary course of business acquire an interest in the goods entitling them to obtain delivery under the bill of lading if they choose to do so. Those persons include bankers advancing money and agents financing the transaction.

THE KING v. JAMES THOMAS HALES, (1924) 1 K. B. 602.

Criminal trial—Sentence—Absence of prisoner—Prosecution—Right to reply—Evidence put in for the defence.

Where the charge against the accused is one of felony, the Court has no jurisdiction to pass sentence in respect to a charge of that nature in the absence of the prisoner.

If any witness other than the accused is called for the defence or a document is put in evidence for the defence, counsel for the prosecution has a right to make a second speech, but not otherwise. Where by leave of the Judge the accused read a portion of a document to the Jury, but that document was not properly admissible in evidence and was not exhibited, the prosecution has no right to make a second speech.

LEWISHAM UNION GUARDIANS v. NICE, (1924) 1 K. B. 618.

Poor Law—Wilful refusal or neglect to work—Willingness to work but prohibition by Trade Union—Effect—Vagrancy Act.

Under the Vagrancy Act, a person "wilfully refusing and neglecting to maintain himself and his family" was liable to be convicted. The evidence in a case showed the person convicted was willing to work and did work at a certain rate of wages, but that his Trade Union informed him not to work for less than the Union rate or otherwise action would be taken against him under the rules. *Held,* on these facts a Court is competent to conclude that there was no wilful refusal or neglect to work within the meaning of the Act.

SMITH v. GRIGG, LTD., (1924) 1 K. B. 655.

Injunction—Interlocutory injunction—Registered design—Infringement of.

In an action for infringement of a registered design, where the registration is recent and there is a genuine dispute about it, the Court will refuse to grant an interlocutory injunction, as a general rule.

THE AGA KHAN *v.* TIMES PUBLISHING COMPANY, (1924) 1 K. B. 675.

Libel—Defence of fair comment—Rolled up plea—What is—Particulars—When to be ordered.

A party is entitled to an order for particulars only for the purpose of ascertaining the nature of the opponent's case that he has to meet and not for the purpose of ascertaining the evidence by which his opponent proposes to prove it.

Where in an action for defamation the defendant has pleaded fair comment in general, *i. e.,* on matters of public interest without indicating what those matters are, an order for particulars should be made.

Where the rolled up plea, *i. e.,* In so far as the words consist of allegations of fact the said words are in their natural and ordinary meaning true in substance and fact and in so far as the said words consist of expressions of opinion they are fair comment made in good faith and without malice for the benefit of the public upon the said facts which are a matter of public interest " is set up in an action for libel, particulars are rarely ordered, because it is for the Jury to decide to which class the different statements belong.

KEEVES *v.* DEAN, (1924) 1 K. B. 685.

Landlord and tenant—Statutory tenant—Who is—Interest if can be assigned.

A person whose tenancy has been determined by notice to quit but who has remained in possession against the will of the landlord on account of the provisions of some statute is known as a " statutory tenant. " The term is a misnomer for he is not a tenant at all. His right is purely a personal one and cannot be assigned, under the Increase of Rent Act, 1920.

THE TUBANTIA, (1924) P. 78.

Shipping—Salvage—Possession of salvors—Trespass—Jurisdiction to interfere.

Where certain salvors were for some time working on a wreck and had incurred considerable expense in salvage works, and thereafter another salvage company tried to work on the wreck and interfere with the former's possession, *held* a suit

in respect of injurious acts done upon the high seas was within the undisputed jurisdiction of the Court of Admiralty and the trespassers could be prevented by injunction from interfering with the rights of the first salvors.

The nature of the possession which will be protected by Courts of Law in such a case discussed.

THE BRITISH TRADE, (1924) P. 104.

Shipping—Maritime lien—Damages for wrongful dismissal—Extent of lien—Wages.

A seaman has no maritime lien in respect of damages for wrongful dismissal from his service under a special contract of service. The lien in respect of wages under a seaman's simple contract of service is not limited to the wages actually earned on board the ship, but includes wages due after a wrongful dismissal.

The distinction between a claim for wages and a claim for damages under a seaman's contract which is broken is this: If there has been merely a breach of the contract by the employer the contract subsists and can be made the subject of a claim for wages. If the employer has repudiated the contract and if it has been accepted by the seaman, the contract is at an end and only a claim for damages will lie.

In re COWLING : JINKIN v. COWLING, (1924) P. 113.

Will—Revocation—Intention—Partial tearing of—Burden of proving animus.

Where a will is found carefully folded and put in an envelope among the papers of the testator, but torn across in such a way that even in spite of the tearing the whole will could be read with certainty, the presumption of law is that the testator tore it ; but the burden of proof is on the party who alleges revocation to prove the *animus revocandi.*

TICKNER *v.* TICKNER, (1924) P. 118.

Divorce—Adultery of petitioner—Court if can grant decree—Discretion—Principles guiding.

As between the parties to a divorce proceeding, a petitioner may not claim divorce on account of misconduct to which the petitioner has conduced ; and on the same principle a respondent may not rely upon misconduct of a petitioner to which the respondent has conduced. The discretion of the Court in such cases cannot be regulated by a classified system laid down in advance.

ELLIS AND COMPANY'S TRUSTEE *v.* DIXON-JOHNSON, (1924) 1 Ch. 342.

Mortgage of shares—Mortgagee selling part of shares—Breach of contract—Damages—Set off—Basis of accounting.

The principle that a mortgagee will not be permitted to sue his mortgagor for the debt, if he has parted with the mortgaged property otherwise than in exercise of the power of sale or with the concurrence of the mortgagor is based on the right which every mortgagor has for a re-conveyance of the property on redemption. If a mortgagee, although unable to perform this duty insisted on suing on the covenant to pay, the Courts of Equity interfered. There is no reason why the principle should not be applied where the mortgaged property consists of investments.

Where a mortgagee of a large number of shares sells away some of the shares without the consent of the mortgagor and thereafter becomes insolvent, the trustee in bankruptcy can sue on the mortgage without offering to replace the shares sold. The Court in taking accounts will set off against the amount due the market value of the shares as on the date on which the shares ought to be restored to the mortgagor. The date on which damages ought to be ascertained is not the date of sale of the shares or when the mortgagor had first notice of the sale or the date of the receiving order.

In re SPIER : HOLT *v.* SPIER, (1924) 1 Ch. 359.

Will—Construction—Bequest of "dividends, bonuses and income"—Undistributed profits—Shares in lieu of money—Nature of.

A testator whose property consisted of shares in a company made a direction in his will for the payment of "dividends, bonuses and income" accruing from his shares to a certain person for life and after his death the shares were to go to some charitable institution. The company had in its hands a large reserve fund and also undistributed profits which had not been carried into the reserve fund. It decided to distribute a large sum as bonus to the share-holders, but instead of paying it as cash distributed it as fully paid-up shares. On the question arising whether the tenant for life was entitled to these shares under the bequest, *held,* it was a distribution of capital and not of income and as such did not pass to the tenant for life. 12 A. C. 385 and (1921) 2 A. C. 171 followed.

BRIGHTON AND HOVE GENERAL GAS CO. *v.* HOVE BUNGALOWS, LTD., (1924) 1 Ch. 372.

Accretion—Natural and artificial causes—Foreshore—Erection of groynes.

The general law as to accretion, *i. e.,*—that lands gained from the sea by small and imperceptible degrees belong to the owner adjoining, while sudden and considerable growths belong to the King, applies to cases brought about by natural causes even if it has been assisted by groynes erected for protecting the shore from erosion. The general law applies even where the alteration of the high water-mark has been brought about by artificial means, or where it has taken place at any time, however distant, after its position has once been clearly ascertained. Case-law discussed.

JOTTINGS AND CUTTINGS.

Success at the Bar.—' Nothing does a young barrister so much good as a little starvation, ' Lord Eldon once remarked. I was not always a successful lawyer—if an Attorney-General can be described as a successful lawyer, ' Sir Patrick Hastings told a sympathetic audience at Leyton the other day. ' Time was when I walked about the streets of London with scarcely

any boots to my feet. I have known what it is to go for days with only one meal a day.' So the Attorney-General, though he does not appear to have indicated whether he had been called when he endured these privations, may be regarded as a striking instance of the Eldonian doctrine. How far the doctrine is really sound may be the subject of controversy. What is certain is that Lord Eldon is not alone in having declared an experience of poverty to be useful to a member of the Bar. When Lord Erskine was asked to give a recipe for success at the Bar he promptly replied 'Not to possess a penny.' A famous Advocate of our own time has also declared the 'eternal want of pence' to be one of the elements of success. A young barrister should have a good deal of ambition, possess very little money, and be very much in love.' So Sir Edward Clarke once informed the members of the Hardwicke Society, some of whom must have often wondered why, having possessed—and retained—all these qualifications, forensic success has been denied them. Perhaps, as they compare the early struggles of Sir Patrick Hastings with his present prosperity, they may be inclined to believe that they were not destitute enough. Or they may realise that something more than a slender purse is required. 'High spirits,' Mr. Justice Maule declared, 'to be essential to the achievement of success.' 'Connection,' said the great Tidd—'a barrister without connections is like launching a ship without water.' 'Frugality, industry, and a good digestion are necessary for success at the Bar.' This is the dictum of Sir Harry Poland, and his allusion to the digestive organs may well create some doubt whether the Eldonian principle, after all, is well founded.

—*The Law Journal*, April 26, 1924, page 247.

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'Dock Briefs' and 'Bar Etiquette.'—The etiquette of the Bar in relation to dock briefs was discussed at the Old Bailey on April 29. Two prisoners choosing barristers, one of whom was not present in Court, the other, who was present, said he did not wish to accept the brief, as he was not a member of the Bar Mess, but the Recorder said he thought the etiquette of the Bar was that he must defend the prisoner if so called upon. Counsel then accepted the brief. Mr. H. D. Roome, one of the Treasury Counsel, said he knew of no rule which allowed a prisoner to designate any member of the Bar by name, and he thought it would be a very undesirable practice.

A prisoner could choose by sight any Counsel sitting in Court unless he removed his wig or got up and left his seat, and this was the practice which had been observed hitherto. The Recorder said any member of the Junior Bar present was bound by the established etiquette of the profession to accept a brief from the dock at the nominal fee of a guinea. It was one of the risks of being in Court. Recently one of the Treasury Counsel was so nominated in a case of considerable magnitude. He believed the question was being considered by the Bar Mess, and he was anxious to assist in setting it. If he found that information was being given to a prisoner behind the scenes which enabled him to pick out a particular counsel he should do his best to deal with it, as he thought the practice of nominating by sight should be maintained. He declined to allow the selection of the absent counsel, and the prisoner thereupon chose another barrister who was in Court to defend him. —*The Law Journal,* May 10, 1924, page 289.

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Making the best of it.—In a Scottish appeal recently before the House of Lords reference was made to an affidavit by a lady who was obviously well over the age of fifty. Yet according to the subtle usage of the Scottish Law her affidavit described her as 'being upwards of twenty-one.' This style of indicating that the person concerned is not a minor aroused the keen interest of Lord Cave, who commended its 'irreducible minimum' as quite a pleasing non-committal way of dealing with a difficult and even embarrassing question. Lord Sumner agreed with Lord Cave, and protested that in future, when occasion arose, he would describe himself as 'being upwards of fifty.' —*The Law Journal,* May 17, 1924, page 305.

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The late Sir Courtenay Ilbert.—By the death of Sir Courtenay Ilbert our group of scientific jurists has lost a very notable figure. He held with much distinction three important offices in the course of his long career. As Legal Member of the Viceroy's Council—a position to which he was appointed more than forty years ago—he was instrumental in framing the famous Bill, bearing his name, which gave the Indian people a firmer belief in the justice of British rule. As Parliamentary Counsel to the Treasury—an office has been occupied by not a few notable men—he showed a mastery of the technique of

law-making which has seldom been excelled. As Clerk to the House of Commons—a position from which he retired in 1921 after nineteen years' service—he acquired a reputation not incomparable to Sir Erskine May's. His finest achievement as a lawyer—he was called to the Bar at Lincoln's Inn sixty-five years ago—was the great service he rendered to the study of comparative law. The page of the 'Journal of Comparative Legislation' have long borne testimony to his earnest interest in the broadening of the basis of legal studies. His name will long be honoured as that of one who helped to strengthen the legal ties of the Empire.

—*The Law Journal,* May 17, 1924, page 292.

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The Press and the Courts.—A dead set has been made by various Press organisations within the past few days against the Judicial Proceedings (Reports) Bill, which was introduced to prevent the publication of indecent and harmful details in divorce and other trials, and which was recently given a second reading in the House of Commons. The Newspaper Society, the Newspaper Conference, and the Chairman of the Press Association have all combined to denounce the measure as an unjustifiable and unwise interference with the liberty of the Press. Nobody has ever suggested that all newspapers make it a practice to exploit the salacious features of unpleasant cases. Even the Newspaper Society, however, in protesting strongly against the Bill, admits that there are some journals which are guilty of this offence. They make their protest, they say, 'while in no sense condoning or countenancing the publication in a section of the press of reports of judicial proceedings calculated to be to the public mischief or injurious to public morals.' Nobody, indeed, acquainted with certain journals can fail to realise that they wilfully report the morbid details of sensational cases, whether in the Divorce Court or the Criminal Courts, and nobody can deny that this disregard to the best traditions of journalism by competitive newspapers of a certain class has become 'a monstrous abuse.' That was how the evil was described by Sir Henry Duke, who gave evidence before the Select Committee on whose recommendations the Bill is based, and who himself was a working journalist in his early days, and has ever shown himself to be mindful of the interests and dignity of his old calling. The opponents of the Bill contend that the present law is adequate to deal with the journals

which pander to the worst tastes of the less refined section of the public. That, in a technical sense, is true. S. 3 of the Law of Libel Amendment Act, 1888, whilst protecting newspapers in regard to fair and accurate reports of judicial proceedings, leaves them under their old common law liability in respect to the publication of objectionable details. It is expressly provided that 'nothing in this section shall authorise the publication of any blasphemous or indecent matter.' Experience, however, has proved that it is very difficult to enforce this common law liability. Not only would proceedings under a statute be easier to institute and to carry to a successful issue, but—what is not less important—the definite provisions of the statute would possess a more deterrent force. —*The Law Journal, May* 17, 1924, *page* 292.

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Lord Buckmaster in Chancery.—Lord Buckmaster, who on more than one occasion has come to the relief of the Courts of first instance, is now sitting as an additional Judge in the Chancery Division, in the place of Mr. Justice Astbury, who, owing to eye trouble, has been compelled to take a long leave of absence. The pleasing spectacle of an ex-Lord Chancellor sitting in the Chancery Division is another proof of the conscientiousness with which Lord Buckmaster and other ex-occupants of the Woolsack continue to earn their pensions.

—*The Law Journal, May* 24, 1924.

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Crime and 'Irresistible Impulse.'—Lord Darling's Bill to declare and amend the law relating to the criminal responsibility of accused persons met with short shrift from the House of Lords when it came up for second reading. Though the Bill was based on the report of Lord Justice Atkin's Committee, it was rejected without a division. Lord Darling was able to cite instances in which past and present Judges had, in summing up, 'coquetted'—to use Lord Hewart's phrase—with the proposition that irresistible impulse rendered an accused person, though not otherwise within the McNaghten rules, not responsible for his act. In particular Mr. Justice McCardie so directed the jury in the case of Ronald True. The Lord Chief Justice, who incidentally announced that, out of twelve of his colleagues whom he had been able to consult, ten were, like himself, emphatically opposed to the Bill, very

pertinently pointed out that whereas in cases in which, as a result of such a charge, a verdict of acquittal (or in practice a verdict of guilty but insane) was returned, the Court of Criminal Appeal had no opportunity of expressing its view and that, in case after case which had come before that Court, the doctrine of irresistible impulse had been expressly repudiated and the law stated to be now as it was laid down in McNaghten's case. Lord Dave summed up one of the chief objections to the proposed change in the law when he said that one of the objects of the Criminal Law is to provide some motive force which will assist a man in resisting the impulse to crime, and that to make irresistible impulse a defence would tend to make irresistible an impulse which now is resistible, and resisted because of penal law. The debate on the Bill has very usefully ventilated the position, and there will, we think, be little excuse for any suggestion in future that 'irresistible impulse' is recognised as part of the common law of this country.

—*The Law Journal, May* 24, 1924.

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Calendar or Lunar Months?—It is not perhaps sufficiently realised that at Common Law the rule was and is that a 'month' in legal documents meant a lunar month, that is, 28 days. In the case of mortgages, however, this rule is excluded, and a month means a calendar month. This exception arises from the fact that the interest on the mortgage money is a fixed yearly sum, and, therefore, half a year's interest is for six calendar months (*per* Mr. Justice Fry in *Hutton* v. *Brown,* (1881) 29 W. R. 928]. In the case of mercantile transactions, also, where the context shows that calendar month is intended, a similar exception exists—*see,* for instance, *Helsham Jones* v. *Hennen and Co.,* (1915) 84 L. J. Ch. 569.

The rule with regard to mortgages is so stated in Davidson's *Precedents in Conveyancing* (4th Edn., Vol. II, Part II, p. 309), and it was cited with approval in *Schiller* v. *Petersen and Co.* (*Lim.*), (1924) 1 Ch. 395. In that case there was a provision in the mortgage deed that if a limited company were formed 'within six months of the declaration of peace,' the mortgagee would accept mortgage debentures for $ 5,000 in discharge of the principal money. The company was formed within six calendar months, but not within six lunar months, so that the difference was material. The Court of Appeal,

following the above rule, held in *Schiller's case* that calendar months were intended, and that the company was formed in time. It is interesting to notice that by the Law of Property Act, 1922, S. 107, 'month' is defined as meaning calendar month. 'This,' said Lord Justice Sargant in *Schiller's case*, 'affords some indication of the gradual change that has been taking place in the meaning of the word 'month'."

—*The Law Journal, May* 24, 1924.

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The Indian Libel Case.—With the political aspects of the action brought by Sir Michael O'Dwyer, formerly Lieutenant-Governor of the Punjab, against Sir Sankaran Nair, once a Member of the Council of India, we have no concern in these columns. It is permissible, however, to express a regret that a libel case should have been treated as an opportunity of re-trying the issues that were before the Hunter Commission, and that the proceedings should have been permitted to assume the importance and length of a State trial. No fewer than 26 days—more than half the Sittings—were occupied by Mr. Justice McCardie in presiding over the long-drawn-out trial. Not, of course, that this is comparable to the excessive length which has made some other trials memorable in the annals of the Courts. The distinction of consuming the largest amount of judicial time in the Civil Courts belongs to the Rhodesia mining case, which in 1916 occupied Mr. Justice Eve no fewer than 144 days—some forty days longer than the civil proceedings in the Tichborne case lasted. Fortunately, the record, so far as the English Courts, both criminal and civil, are concerned, is still held by the criminal trial in the Tichborne case, which lasted 188 days. But the Indian Libel case, though not comparable to these abnormally long trials, does demonstrate a marked tendency of trials of a certain character to increase in length. It is most desirable, of course, that cases should be fully heard, so that litigants may feel on leaving the Courts that, whether they have won or lost, all that they had to say was carefully listened to. But merely because cases excite the public interest is certainly no reason why the becoming limits of relevancy should not be strictly adhered to.

The Law Journal, June, 14, 1924

The Attorney-General and the Public Interest.—The Court of Appeal in the Westminster Public Libraries case (*Attorney-General* v. *Westminster City Corporation,* June), which was commented on when it was before Mr. Justice Tomlin (*ante,* p. 69), have now definitely chosen between two conflicting *obiter dicta* pronounced in the same Court as long ago as 1879. In that year, in *Attorney-General* v. *Great Eastern Railway Company* (II Ch. D. 449), a question was raised as to whether a railway company ought to be restrained from letting rolling stock and manufacturing it for that purpose. The Attorney-General had been set in motion by a manufacturer of rolling stock, who considered that his business would suffer and that the acts complained of were *ultra vires.* Jessel, M. R., in the Court below, and Baggallay, L. J., in the Court of Appeal, considered that the acts were *ultra vires,* but the majority in the latter Court (James and Bramwell, L. JJ.) were of the contrary opinion, so that the action was dismissed. The *obiter dicta* between which the Court had to choose in the recent case dealt with the important point as to when the Attorney-General ought to grant his fiat in actions of this nature. Lord Justice James' *dictum* was this ' Where the matter is a mere matter of *ultra vires* . . there ought to be some plain and sufficient public mischief shown to warrant a suit on behalf of the Sovereign or the public. It is not, in my opinion, sufficient to say the thing complained of is *ultra vires,* and that it interests the public ; that whatever may be the nature or extent of the excess complained of, the excess should be at once stopped, so that bodies incorporated and established by Act of Parliament should be taught to keep within their strict lines. I cannot accede to any such view of the duty of the Attorney-General or of this Court. . It is only where some public mischief is done, or where, in respect of something intended for the public protection there is misfeasance or nonfeasance, that the Attorney-General ought to interfere." Lord Justice Baggallay's *dictum* to the contrary was this ' It is the interest of the public that the law should in all respects be respected and observed, and if the law is transgressed or threatened to be transgressed, it is the duty of the Attorney-General to take the necessary steps to enforce it, nor does it make any difference, whether he sues *ex-officio,* or at the instance of relators '. The latter view has now prevailed, and in the course of his judgment Pollock, M. R., said : ' I have no doubt that the Attor-

ney-General's discretion as to interfering has been exercised with due care and responsibility, and the Court must accept it.' His Lordship's view of the action of the local authority in this case (using a public library as a town hall) was thus expressed: 'In exercising their powers as a library authority, they must exercise them with the single purpose of a library authority; they cannot pool their powers and exercise them for the general purposes of the City of Westminster. They must maintain the purpose of a library authority and deal with the land as being for a public library.' The appeal was accordingly dismissed, and the action of the Attorney-General, as well as the public spirit of the two gentlemen who acted as relators, has thus been fully vindicated.

—*The Law Journal, June* 14, 1924.

BOOK REVIEWS.

BOWSTEAD ON AGENCY, 7th Edition, 1924, published by *Messrs. Sweet and Maxwell, Ltd.*, 3, *Chancery Lane, London, W C.* 2.

"The Digest of the Law of Agency" by Mr. Bowstead has been recognised to be the leading treatise on the subject for many years. The last edition of the book brought the cases reported down to the end of long vacation of 1918. The present edition has been revised with reference to cases reported down to the end of 1923 and every case of importance bearing on the subject finds its proper place in the book. We have no doubt that this edition of the work will fully maintain the high reputation of its predecessors and the work will continue to be a standard work of reference on the law of principal and agent.

UNDERHILL'S LAW OF TORTS, 2nd Indian Edition, by *Dr. M. Krishnamachariar.* Published by Messrs. Butterworth & Co.

Underhill's "Law of Torts" is well known for the lucidity with which the principles of the law on the subject have been stated and illustrated by reference to the leading cases. From its method of treatment, it is best suited for the student trying to understand the fundamental principles of the law of torts. The second Indian edition which gives references to the Indian

cases will be found of great use in this country. Dr. Krishnamachariar is known to us as a writer and commentator on many legal subjects and this edition which collects all the important English and Indian cases up-to-date will, we feel sure, be found highly useful to the students and practitioners.

SUPPLEMENT TO RAY'S CRIMINAL PROCEDURE CODE, 1898, containing amendments introduced by Criminal Procedure (Amendment) Act, 1923.

We have great pleasure in acknowledging the receipt of the supplement to the Criminal Procedure Code containing the amendments introduced by Criminal Procedure (Amendment) Act, 1923, which is a useful and necessary supplement to the author's edition of the commentary to the Code of 1898.

THE LAW OF GIFTS IN BRITISH INDIA, by *B. C. Law*, Vakil, High Court Calcutta. Thacker, Spink & Co.

This work which treats of the "Law of Gifts" as applicable to the Hindus and Mahomedans does not belong to the ordinary category of legal text-books which collects together under appropriate headings the result of cases on the various topics dealt with. The juristic conception of gifts has been examined by the author with reference to the ancient Hindu and Mahomedan Law texts. The work discloses great originality and research and is bound to provoke thought on the theories put forward by the author. This is sufficiently illustrated from the circumstances that Dr. Gour in his foreword to the book has thought fit to join issue with the author in some of his views on which the learned Doctor has expressed himself differently in his own works. The learned author has also fully dealt with the entire case-law up-to-date. This collection of the principles and cases on the law of gifts is bound to be of great value to practitioners and Judges who may have to deal with questions arising on this subject.

COURT FEES AND SUITS VALUATION ACTS WITH COMMENTARIES, by *Dewan Bahadur Pindi Das Subharwal* and *Ram Lal Anand*.

There is such a large mass of case-law in recent years on the various provisions of these Acts that a fresh commentary on

them is not without justification. The authors have not contented themselves with giving references to the decided cases, but have critically examined them wherever necessary. Towards the end of the book, the various provincial enactments on Court fees are given and they will be found of great use in the several provinces. We venture to point out that the utility of the book would have been greatly increased if there were annexed to the book a list of the cases referred to and the references to pages where they are considered. We hope that this suggestion of ours will be carried out in the next edition of the book.

THE WORKMEN'S COMPENSATION ACT, 1923 WITH NOTES AND COMMENTARIES, by *Dr. Abdul Majid.* Published by Messrs. Butterworth & Co.

"The Indian Workmen's Compensation Act of 1923" is the first of its kind in this country. Enactments on the subject have been in operation for some years in England and elsewhere and there has grown round the English enactments a large mass of decided cases which are not always easy to reconcile. Dr. Abdul Majid is well known as a writer of legal text-books and we feel sure that he has striven his best to collect the English decisions having a bearing on the language of the Indian enactment in their appropriate places. We feel sure that this book will be found of great utility in the understanding and working of this measure in this country.

THE WORKMEN'S COMPENSATION ACT, 1923, by *C. M Agarwala,* Advocate, Patna High Court. Butterworth & Co., Calcutta.

This is another commentary on the Indian Workmen's Compensation Act. The outstanding feature of this work is the introduction which gives in language which is intelligible even to lay readers, a succinct statement of the law with reference to the sections of the Act. This would be of especial value to employers of labour who will have to acquaint themselves with at least the outlines of the Act. The notes are very lucid and the references to cases, English and Indian, are given in appropriate places. We hope that this book will have its career of usefulness to the bench, the bar and also to employers of labour.